

Fairbanks Coal, Inc. and United Mine Workers of America, Local Union No. 8217, District 17.
Case 9-CA-30618

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge filed by United Mine Workers of America, Local Union No. 8217, District 17 (the Union), the General Counsel of the National Labor Relations Board issued a complaint against Fairbanks Coal, Inc. (the Respondent), alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On September 8, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On September 9, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated July 28, 1993, notified the Respondent that unless an answer was received by August 6, 1993, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, has been engaged in the mining of coal in the vicinity of Man, West Vir-

¹ In his memorandum in support of the Motion for Summary Judgment, counsel for the General Counsel indicates that the copy of the complaint sent by certified mail and the July 28, 1993 letter sent by certified mail were returned to the Regional Office marked "Unclaimed." The copy of the complaint and the letter sent by regular mail were not returned to the Regional Office. The Respondent's failure or refusal to claim certified mail cannot serve to defeat the purposes of the Act. See *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

ginia. During the 12-month period ending June 7, 1993, the Respondent sold and shipped goods valued in excess of \$50,000 directly to M & H Coal Company (M & H), a nonretail enterprise, located within the State of West Virginia. During the 12-month period ending June 7, 1993, M & H sold and shipped goods valued in excess of \$50,000 directly to points outside the State of West Virginia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The employees of the Respondent described in article IA of the National Bituminous Coal Wage Agreement of 1988 (NBCWA 1988) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. NBCWA 1988, which was effective through February 1, 1993, was a collective-bargaining agreement between the Respondent and the United Mine Workers of America on behalf of its various districts and locals including District 17 and Local Union No. 8217. Since about November 5, 1992, the Union has been the designated exclusive collective-bargaining representative of the unit employees and since then the Union has been recognized as such representative by the Respondent. This recognition has been embodied in NBCWA 1988. Since about November 5, 1992, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employees.

Since about November 5, 1992, the Respondent has failed to obtain and continue in effect all the terms and conditions of the NBCWA 1988 by failing to provide appropriate medical insurance and by failing to pay the medical expenses of the unit employees. These terms and conditions of employment are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without the Union's consent and without notice to and bargaining with the Union over this conduct or the effects of this conduct.

CONCLUSION OF LAW

By failing to provide appropriate medical insurance and by failing to pay the medical expenses of the unit employees, the Respondent has engaged in unfair labor practices affecting commerce in violation of Section 8(a)(1) and (5) and within the meaning of Section 2(6) and (7) and Section 8(d) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifi-

cally, we shall order the Respondent to obtain the appropriate medical insurance and to reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in relevant part in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Fairbanks Coal, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to provide appropriate medical insurance and failing to pay the medical expenses of its unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide appropriate medical insurance and pay the medical expenses of unit employees and make its unit employees whole, with interest, for any expenses they incurred as a result of failure to obtain the appropriate medical insurance and failure to pay the medical expenses of unit employees.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(c) Post at its facility in Man, West Virginia, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. September 30, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to provide appropriate medical insurance and WE WILL NOT fail to pay medical expenses pursuant to the terms of the National Bituminous Coal Wage Agreement of 1988 for employees represented by United Mine Workers of America, Local Union No. 8217, District 17, in the unit set forth in article IA of the agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make our employees whole, with interest, for our failure to provide appropriate medical insurance and our failure to pay medical expenses by obtaining the appropriate insurance and reimbursing unit employees for all expenses ensuing from our failure to provide the appropriate insurance and our failure to pay the medical expenses pursuant to the agreement.

FAIRBANKS COAL, INC.